


**Government of the District of Columbia  
Office of the Chief Financial Officer**



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Vincent C. Gray  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi  
Chief Financial Officer 

**DATE:** June 21, 2010

**SUBJECT:** Fiscal Impact Statement – “Assistive Technology Device Warranty Act of 2009”

**REFERENCE:** Bill Number 18-527 – As Introduced

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**Conclusion**

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The proposed legislation does not impact the District’s budget and financial plan.

**Background**

The proposed legislation would establish an implied warranty for certain equipment and electronics, such as wheelchairs and hearing aids, typically used by residents age 60 and older and persons with disabilities (assistive technology devices)<sup>1</sup>, which would provide greater consumer protection than common law in the District. Specifically, it would require that aside from any other provision of law or express warranty furnished by the manufacturer, the manufacturer will provide a warranty for one year that the assistive device, when used as

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<sup>1</sup> A broader definition of “assistive technology device” is an item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used or designed to be used to increase, maintain, or improve a functional capability of an individual with a disability, including wheelchairs and scooters, hearing aids, telephone communication devices for the deaf, computer equipment and reading devices with voice output, optical scanners, talking software, Braille printers, artificial larynges, voice amplification devices, voice recognition computer equipment, software and hardware accommodations, switches, and other forms of alternative access to computers, and simple mechanical aids that enhance the functional capabilities of an individual with disabilities.

intended, will be free from any nonconformity,<sup>2</sup> and any nonconformity will be repaired, including parts and labor, without any cost to the consumer. If the nonconformity is not repaired after reasonable attempts,<sup>3</sup> the assistive device dealer, lessor or manufacturer would be required to accept return of the nonconforming device and replace it with one of comparable value, function and usefulness or provide a refund to the consumer including all collateral costs,<sup>4</sup> within thirty days of a consumer's request. Additionally, the resale or lease of any returned device due to nonconformity would only be allowed with a full disclosure in writing of the reason for return.

The proposed legislation would void any manufacturer or dealer exclusion or limitation of the implied warranties or consumer remedies, and any waiver of rights to legal action by a consumer within an assistive device purchase or lease agreement. It would also allow consumers to bring legal action to recover damages in case of a loss resulting from a violation of this legislation, in addition to any other remedies otherwise available to consumers; and would require the court to award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with the costs, reasonable attorney fees and any equitable relief that the court determines is appropriate. The remedies afforded would be cumulative and not exclusive, and would be in addition to any other legal or equitable remedies otherwise available to the consumer.

### **Financial Plan Impact**

Funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to implement the proposed legislation. The proposed legislation would establish an implied warranty for assistive electronic devices, and does not directly impact the District's budget and financial plan.

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<sup>2</sup> "Nonconformity" is defined as a condition of defect that significantly impairs the use, value, function or safety of a device or any of its components, but does not include a condition or defect of the device that is the result of abuse, misuse or neglect by a consumer, modifications or alterations not authorized by the manufacturer, normal wear, and normal use which may be resolved through a failure to follow any manufacturer's written service and maintenance guidelines furnished to the customer at the time of purchase.

<sup>3</sup> "Reasonable attempt to repair" is defined as within one year after the date of first delivery of the device, the same nonconformity has been subject to repair three or more times by the manufacturer or an authorized party, and the nonconformity continues to exist and interfere with the device's operation; or the device is out of service, with no fungible loaner available, for a cumulative total of at least thirty days, due to repair by the manufacturer or an authorized party, all of which is due to warranty non-conformities.

<sup>4</sup> "Collateral costs" are defined as the following expenses incurred by a consumer:

- (a) Medical expenses for the treatment of a physical injury caused by nonconformity in an assistive technology device or mobility aid;
- (b) The cost to rent a substitute assistive technology device or mobility aid during the time repairs are attempted and during the time preceding receipt of a replacement when repairs have been unsuccessful;
- (c) The cost of shipping a nonconforming assistive technology device or mobility aid to a manufacturer or an authorized party for repair or replacement; and
- (d) The documented costs of long-distance telephone calls and facsimile transmissions used to contact the manufacturer, lessor, or authorized dealer for a repair or replacement.